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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,243	12/26/2000	Robert R. Holcomb	P00376US	5808

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GARVEY SMITH NEHRBASS & DOODY, LLC  
THREE LAKEWAY CENTER  
3838 NORTH CAUSEWAY BLVD., SUITE 3290  
METAIRIE, LA 70002

EXAMINER

METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/749,243

**Applicant(s)**

HOLCOMB, ROBERT R.

**Examiner**

Daniel S. Metzmaier

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-16 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 8-16 are allowed. This application is in condition for allowance except for the following formal matters:

#### ***Priority***

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

While reference to "60/085,289, filed May 13, 1998," was made in the originally filed application, said reference has been canceled and replaced by the amendment to update the status of the parent application at page 1, lines 10 and 11<sup>1</sup>.

#### ***Drawings***

2. New corrected drawings are required in this application because of the following reasons.

- (1) 37 CFR 1.84(t) sets forth:

"The sheets of drawings should be numbered in consecutive Arabic numerals, starting with 1, within the sight as defined in paragraph (g) of this section. These

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<sup>1</sup> It is noted that none of the original pages contained page numbers or line numbers. Applicant is encouraged to use page numbers and line numbers for any future correspondence for ease of referencing. It is further noted that the amendments have been scanned into the image file and said corrections require formal amendment to place it in proper form.

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numbers, if present, must be placed in the middle of the top of the sheet, but not in the margin. The numbers can be placed on the right-hand side if the drawing extends too close to the middle of the top edge of the usable surface. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. The number of each sheet should be shown by two Arabic numerals placed on either side of an oblique line, with the first being the sheet number and the second being the total number of sheets of drawings, with no other marking.”.

The instant figures are not numbered consecutively. Specifically, the amended figures include “6A”, which may be permitted but does not include the abbreviation “FIG.”. Fig. 13 is not present. Applicants previously attempted to canceled Fig. 20 and provide said figure as Fig. 13. Fig. 20 has been presented.

The newly submitted drawing sheets are not a complete set of drawings including new drawing Fig. 21, Fig. 22, Fig. 23 and Fig. 24. If Fig. 21 is canceled, these Figures should be numbered Fig. 20, Fig. 21, Fig. 22 and Fig. 23. Applicants should observe proper margins in all drawings. See 37 CFR 1.84(g).

Furthermore, the figures must correspond with all references thereto in the specification. Fig. 13 is references at least at page 17, line 17, but Fig. 20 is not referenced.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

(1) Page 1, lines 8-9 and 10-12, contain duplicate references to the parent serial number 09/092,676. This is redundant and lines 8-9 should be deleted in their entirety.

(2) The "Brief Description of the Drawings" does not correspond to the drawings as amended in the filing of October 3, 2003 and December 29, 2003. Fig. 13 is not present. Applicants previously attempted to canceled Fig. 20 and provide said figure as Fig. 13. Fig. 20 has been presented and has no brief description in the specification.

(3) The label for Fig. 21, Fig. 22, Fig. 23 and Fig. 24 are indistinct from the x-axis of the graph and should be labeled as set forth in 37 CFR 1.84(t).

Appropriate correction is required. A proper response will include a complete set of the drawings with the appropriate corrections and the corresponding corrections to the specification.

### ***Response to Amendment***

4. The amendment to the claims filed on October 3, 2003 does not comply with the requirements of 37 CFR 1.121(c) because it does not employ the proper status identifiers as required. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after

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its claim number by using one of the following identifiers in a parenthetical expression: **(Original)**, **(Currently amended)**, **(Canceled)**, **(Withdrawn)**, **(Previously presented)**, **(New)**, and **(Not entered)**.

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of “canceled” or “not entered” may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, i.e., without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

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Applicants are **required** to present a claim list that presents the claims with the **proper status identifiers to be fully responsive** to this Action. Also note, claim 13 uses the improper status identifier "Amended" but has no changes. Please clarify.

***Conclusion***


Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Daniel S. Metzmaier  
Primary Examiner  
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DSM